

**TESTIMONY OF  
JUDY CLAUSEN  
NATIONAL LAW SCHOOL VETERANS CLINIC CONSORTIUM  
LEGISLATIVE ADVOCACY COMMITTEE  
BEFORE THE  
SUBCOMMITTEE ON ECONOMIC OPPORTUNITY  
COMMITTEE VETERANS' AFFAIRS  
UNITED STATES HOUSE OF REPRESENTATIVES  
“REDUCING VETERAN SUICIDE BY ADDRESSING ECONOMIC RISK FACTORS”**

**MAY 11, 2022**

Chairman Levin, Ranking Member Moore and distinguished members of the Subcommittee, on behalf of the National Law School Veterans Clinic Consortium (Consortium), we thank you for inviting the Consortium to testify today.

**The National Law School Veterans Clinic Consortium**

The Consortium is an organization led by the nation’s law school legal clinics dedicated to addressing the legal needs of U.S. military veterans. We work with like-minded stakeholders to support and advance common interests with the U.S. Department of Veterans Affairs, U.S. Congress, state and local veterans’ service organizations, court systems, educators, and relevant entities for the benefit of veterans throughout the country.

I am the Deputy Chair of the Consortium’s Legislative Advocacy Committee. This Committee monitors federal and state legislation and regulations pertaining to veterans. The Committee advocates on behalf of the Consortium and its members and clients and advises the Consortium’s Board of Directors on issues related to legislative and regulatory advocacy. The Committee’s areas of focus include: pending federal and state legislation and regulations affecting veterans’ access to the judicial system and administrative agencies; promoting law reform in the interest of veterans; and supporting lawyers and law school clinics in carrying out their efforts to assist veterans.

**Executive summary of testimony**

Chairman Levin, ranking member Moore, and distinguished members of the subcommittee, on behalf of the National Law School Veterans’ Clinic Consortium, thank you for inviting me to discuss how our clinics address upstream risks of veteran suicide. Upstream risks of suicide include financial strain, lack of housing, food insecurity, unemployment, and legal issues. We give veterans hope. I will outline our practice areas and show how we address upstream risks. I will conclude with reform ideas.

First, we help veterans obtain VA benefits, addressing financial insecurity. Collectively, we have recovered tens of millions of dollars of wrongfully denied VA benefits. As one example, William and Mary has represented clients in nearly 800 successful disability claims and recovered retroactive benefits of nearly \$9 million for clients as well as over \$60 million in expected future lifetime benefits. To illustrate how this addresses upstream risks, we recovered hundreds of

thousands of dollars of disability back pay for a homeless Vietnam veteran enabling him to buy a home. Our services are pro bono; many of us fund clients' expenses with equal access to justice act fees; this provides veterans access to medical experts, helping veterans prove their cases. But, even if they ultimately succeed, veterans often wait years. Huge delays cause frustration and a feeling of powerlessness. Plus, to support mental health claims, veterans must re-live trauma in compensation and pension exams, VA hearings, and written testimony. This exacerbates mental health symptoms. One veteran stated, after her VA hearing, she struggled to get out of bed for days.

Second, in discharge upgrades and character of discharge matters, we help veterans obtain financial security and remove employment barriers. Because of limited employment opportunities, trauma from forced separation, and denial of access to VA healthcare and benefits, Veterans with other than honorable discharges may be at greater risk of homelessness and suicide. When we obtain discharge upgrades, we remove stigma, expand employment prospects, open access to VA healthcare and benefits, and help veterans regain self-esteem. However, veterans wait years for discharge upgrade decisions. These delays exacerbate stress. Often, decisions are perfunctory denials with little analysis. This leaves veterans feeling discarded. We made systemic change here. Yale convinced the Navy to review discharges of thousands of veterans with mental health conditions, potentially removing employment barriers and providing access to VA benefits and healthcare.

Third, interactions with the criminal justice system leave veterans at risk of suicide and homelessness. Some clinics help address these upstream risks when they represent veterans in veterans' treatment court. Completion of the program enables shorter probation.

Fourth, some clinics provide know your rights presentations and legal representation concerning family law, consumer debt, landlord-tenant, criminal records expungement, driver's license reinstatement, Social Security, wills, guardianship, advance healthcare planning, and small claims. These services are vital to veterans at risk of homelessness. For example, a clinic obtained a release from the lease of an apartment filled with mold, allowing a disabled veteran to move to safe housing.

My written testimony explores ideas for reforms. I highlight two. First, for the most part, we created the infrastructure of law school clinics without federal funding. If Congress wants to jumpstart other vital legal services, consider grants for small business clinics. Law students could create business entities, draft governing documents, and obtain intellectual property protection for veteran entrepreneurs; law students could partner with business school students who could develop business plans and marketing strategies. These services could help veteran entrepreneurs regain the sense of purpose they had when serving.

Second, investigate expanding the G.I. bill to veterans with general discharges. In one case, a medic who had back-to-back deployments to Iraq self-medicated PTSD with drugs, leading to an OTH discharge. He obtained an upgrade to general but does not have access to the G.I. Bill and must take out educational loans. Expanding access to the G.I. Bill will address upstream risks for

more veterans. We want to help address upstream risks to the crisis of veteran suicide, and we are happy to take on research projects to help. I welcome your questions.

## **Appendix 1 – full testimony of services and proposals**

### **I. Services provided by the nation’s law school veterans clinics**

The 2021 Report of the Veterans’ Task Force noted that once service members separate from service, “they may face legal issues obstructing their successful transition to civilian life. Civil legal problems – from threatened evictions to other than honorable discharges from the military – are often the greatest obstacles to a veteran’s health, housing, stability, and productivity.”<sup>1</sup> Specifically, the report noted that in 2017, over 70% of the households of veterans or servicemembers reported experiencing a civil legal problem in the past year. Law school veterans clinics help address this access to justice issue by providing a host of legal services described below.<sup>2</sup>

For example, one law school veterans clinic helped a veteran remove a disputed debt from his credit report, allowing him to obtain a business loan. In another example, a law school veterans clinic provided legal representation ensuring a veteran was released from his residential lease of an apartment contaminated by dangerous black mold. In another client story, a law school veterans clinic helped a veteran obtain hundreds of thousands of dollars of retroactive benefits allowing the Vietnam veteran who had been homeless for decades buy a house. In yet another example, the work of a law school veterans clinic secured hundreds of thousands of dollars of retroactive benefits for a blind, double-amputee Gulf War veteran as well as funding for a full-time nurse and modification of his housing to accommodate his handicaps. Quite simply, the work of law school veterans clinics improves veterans’ lives, addressing upstream economic risks, and helping to prevent suicidal crisis.

#### **A. Represent veterans before VA at all levels**

Many law school veterans clinics represent claimants before VA at all levels. For example, law school clinics across the nation, such as at University of Baltimore, Detroit Mercy, Emory,<sup>3</sup> Harvard, Yale, UCLA, William and Mary, Penn State, Stetson, Widener, and the Universities of Georgia, Florida, Montana, and Missouri represent claimants before the U.S. Court of Appeals for Veterans Claims, Board of Veterans’ Appeals, and VA Regional Office. These clinics have

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<sup>1</sup> <https://www.lsc.gov/our-impact/publications/other-publications-and-reports/lsc-veterans-task-force-report>

<sup>2</sup> “For the past nine years, the VA has conducted its annual “CHALENG” survey that asks veterans, community partners, and VA staff about homeless veterans’ needs. Every year since 2010, half of the overall top 10 unmet needs of homeless veterans require a lawyer’s help to resolve.” [https://www.americanbar.org/advocacy/governmental\\_legislative\\_work/publications/washingtonletter/June\\_2019\\_Washington\\_Letter/homeless\\_vets\\_article/](https://www.americanbar.org/advocacy/governmental_legislative_work/publications/washingtonletter/June_2019_Washington_Letter/homeless_vets_article/).

<sup>3</sup> Since January 2020, Emory has secured more than \$4 million in VA benefits for low-income veterans. This amount includes backdated and future VA benefits; for the future benefits amounts, Emory uses the life expectancy tables, the veteran’s age, and the monthly benefit amount awarded.

had an enormous impact on the financial stability of veterans and their families.<sup>4</sup> For example, the Missouri clinic recently announced that it exceeded the \$10 million mark in terms of money recovered for clients in VA disability cases. This clinic started eight years ago. As another example, the Detroit Mercy Veterans Law Clinic was founded in 2008 and has recovered 4.2 million in retroactive benefits. As another, in just over 10 years, William and Mary's Puller Veterans Clinic has represented clients in nearly 800 successful disability claims and recovered back compensation benefits of nearly \$9 million for clients as well as approximately \$60 million in expected future lifetime benefits. And as a final example, the Stetson University Veterans Advocacy Clinic has raised the projected lifetime compensation of their clients to 22 million.<sup>5</sup>

## **B. Discharge upgrades**

Many law school veterans clinics handle VA character of discharge matters and DoD discharge upgrades.<sup>6</sup> For example, the Military and Veterans Law Clinic at the University of North Carolina serves low-income veterans who are currently precluded from receiving VA healthcare and disability benefits because of their discharge status. Students represent clients before military administrative boards and VA.<sup>7</sup>

In one client story from the University of Arizona, a Sailor had PTSD and TBI stemming from a car accident while he was on active duty. He suffered further head injuries on a Navy ship, and these injuries exacerbated PTSD and TBI symptoms. He did not receive assistance from the Navy, and he turned to alcohol and marijuana to self-medicate symptoms of depression, anxiety, and insomnia all caused by PTSD and TBI. Eventually, the Navy forced his separation giving him an other than honorable discharge, precluding him from VA benefits. The University of Arizona law school veterans clinic worked with medical experts who drafted opinions explaining how his self-medication with marijuana and drugs was connected to his service-connected PTSD and TBI. Finally, because of the work of the clinic, the veteran's discharge was upgraded to general, under honorable conditions, and this was a huge win for the veteran who was able to apply for disability compensation.

We note that lengthy delays in obtaining decisions on VA character of discharge and DoD discharge upgrades can be extremely burdensome on veterans. A client story from the University

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<sup>4</sup> In our collaboration between clinics, we have learned that there can be a wide discrepancy in allowing veterans access to compensation and healthcare benefits based on which city or state the veteran lives in.

<sup>5</sup> And there are many of these examples. As another example, the veterans clinic at Widener University Delaware law School was founded in 1997 and has secured over \$14 million in retroactive benefits.

<sup>6</sup> For example, clinics that work on discharge upgrades include, but are not limited to, veterans clinics at the University of Arizona, Chapman University, the University of Florida, Stanford Law School, the University of San Diego, the University of Denver, Sturm College of Law, Yale Law School, the John Marshall School of Law, Southern Illinois University School of Law, Indiana University Mauer School of law, University of Baltimore School of Law, Harvard Law School, Hofstra University School of Law, Syracuse University School of Law, South Texas College of Law (formerly Houston College of Law), George Mason University School of Law, West Virginia University College of Law. This list is not exclusive and is based on a list of clinics and their services that was last updated in 2018.

<sup>7</sup> The stories illustrate how discharge upgrades address upstream risks of suicide. As an example, Emory successfully upgraded a Navy veteran's general discharge to an honorable discharge. He suffered a traumatic brain injury while in service which led to his discharge. He had felt shame and guilt for 20+ years for not having an honorable discharge, and this correction of his DD 214 brought enormous solace for him.

of Baltimore serves as a good example. The Baltimore clinic represented a client who VA denied for a character discharge review. The Baltimore clinic then petitioned for a discharge upgrade with the Navy. It took two years for that decision, and the client was eventually awarded an upgrade from other than honorable to general. However, in the two years that it took to upgrade his discharge, the bank foreclosed on his home, and his family was evicted. The veteran died shortly after his upgrade. The Baltimore clinic is now the process of attempting to obtain retroactive benefits for his widow.

### **C. Social Security benefits**

Some law school veterans clinics represent clients in Social Security matters as well as other matters. For example, clinics at the University of Georgia and Duquesne University represent veterans in Social Security disability matters.

### **D. Advise judge advocates and civilian attorneys**

Law school veterans clinics not only provide direct legal representation to veterans, they counsel civilian attorneys and judge advocates nationwide. For example, the Mizzou Law Veterans Clinic trained hundreds of area attorneys about how to represent claimants before VA. The University of Baltimore veterans clinic also hosts conferences to train advocates and veterans in VA benefits and discharge cases. The UNC Military and Veterans Law Clinic pairs law students with Army judge advocates representing Soldiers subject to administrative discharge. The students consult military defense counsel in administrative discharge matters. They create materials for military defense counsel relaying the monetary value of healthcare and disability compensation benefits that will be forsaken by an other than honorable discharge. Military defense lawyers then use these materials in plea negotiations and in advising the Soldier on responding to plea offers. The professor of the UNC clinic teaches judge advocates at Fort Bragg on VA implications of other than honorable discharges.

As another example, students at the UF Veterans and Servicemembers Legal Clinic draft research white papers for the judge advocates in the southeast region who provide legal assistance to Sailors. As another example, the professor of the Duquesne University Law School Veterans Clinic teaches students and local attorneys mental health first aid so that they can recognize signs that a client is in mental health crisis.

### **E. Outreach to veterans**

Law school veterans clinics also participate in various outreach efforts for local veterans. For example, UF Law clinic provides Know Your Rights presentations concerning landlord-tenant, removing a disputed debt from a credit report, driver's license reinstatement, criminal records expungement, and wills and advance healthcare planning to local homeless veterans. The University of Baltimore veterans clinic provides know your rights presentations to local nonprofits, including the Maryland Center for Veteran Education and Training, and the Baltimore clinic hosts an annual conference that includes a know your right session for veterans.

As another example, Emory Law has paired with The Warrior Allowance and United Military Care to staff Stand Downs. Emory Law conducts intakes for veterans who need help with VA

disability benefits and discharge upgrades. Emory also prepares basic estate planning documents for low-income veterans at Stand Downs and holds wills clinics at the VA Regional Office in Decatur, Georgia. From January 2020 until the present, Emory has prepared 150+ basic estate planning documents and has saved veterans more than \$80,000 in legal fees for estate planning.

#### **F. Legal aid services outside of governmental benefit matters**

Many clinics provide general legal aid services to veterans and their dependents. For example, amongst other legal services, the Emory Law Volunteer Clinic and Widener University Delaware Law Veterans Law Clinic assist low-income veterans and dependents with powers of attorney, wills, and advanced directives for healthcare. UCLA's Veterans Legal Clinic handles postconviction and record clearing relief and landlord-tenant issues in addition to VA benefits. The Loyola University Chicago School of Law Veterans Clinic assists veterans with guardianships, divorces and allocation of parental rights, name changes, powers of attorney, wills, and small claims. Stetson's Veterans Law Institute partnered with Bay Pines VA Healthcare System, Bay Area Legal Services, and Gulf Coast Legal Services to create a medical legal partnership. Area qualifying low-income veterans have access to free civil legal services through the new partnership for noncriminal offenses in a range of areas from veterans benefits and Social Security disability benefits to family law matters, guardianship, and landlord-tenant disputes. Stetson law students work with VA social workers and legal aid attorneys to assist veterans with their civil legal needs twice weekly in an office at the local VA medical center.<sup>8</sup> In addition to representing veterans in governmental benefits matters, the University of South Carolina Veterans Clinic represents clients in general legal aid matters such as family law, housing issues, and credit and related financial matters. Michigan Law School's veterans clinic offers veterans and in some cases their families legal help in civil matters such as family law, eviction, consumer problems, foreclosure, and employment cases. We have a list of veterans clinics at the nation's law school with contact info and practice area that we are updating and can later provide.<sup>9</sup>

Plus, the University of Baltimore veterans clinic is involved in a project in which students provide civilian criminal law attorneys with mitigation evidence for veterans involved in the criminal legal system in Baltimore. University of Baltimore has expertise and knowledge in obtaining military service records and will use this expertise to assist criminal attorneys representing defendants in sentencing cases by presenting evidence in mitigation.

#### **G. Veterans treatment court**

Some law school veterans clinics represent veterans in veterans treatment court. For example, the Duquesne University Veterans Clinic enables students as certified legal interns to represent veterans in veterans treatment court. According to the jurisdiction's rules, most veterans

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<sup>8</sup> The UC Berkeley law and VA medical center student run clinic helps veterans fight for disability, pension, and other benefits. Students also assist with military discharge upgrades and minor civil law matters.

<sup>9</sup> And there are more examples. For example, Emory recently received an ABA grant which allowed Emory to co-host virtual clinics at Atlanta Legal Aid. Legal aid was a force multiplier for the Emory veterans clinic because legal aid helps in areas that the Emory clinic does not focus such as foreclosure, child custody, and Social Security benefits.

participating in the program have committed offenses like DUI and low level drug offenses, and all have mental health diagnoses or were in combat. Although participating veterans still receive convictions when they complete the program, veterans who complete the program receive less time in probation. The Duquesne Clinic is currently advocating for reform so that successful completion of the program allows for no conviction at all. The University of Arizona Veterans Advocacy Law Clinic has been working with veterans treatment court for over 10 years, and this work is at least 50% of their legal practice.

Moreover, the University of Baltimore veterans clinic students represent veterans involved in the criminal legal system who were charged with misdemeanors in Baltimore. Students work with the office of the public defender to represent clients in status hearings and offer civil legal services to veterans. University of Baltimore students helped establish the first veterans treatment court in Maryland's district court system and are working with the State Bar Association and judiciary to establish more veterans treatment courts in Maryland.

## **H. G.I. Bill fraud**

Amongst other legal services provided to veterans, the University of San Diego Veterans Legal Clinic represents veterans who have found themselves in a dispute with a for-profit education company over the use of G.I. Bill funds of related education loans. And the clinic helps by providing free legal advice, identifying potential claims, and even representing veterans in litigation, arbitration and other forms of dispute resolution with for-profit education companies.

## **II. The unique benefits of law school veterans clinics**

### **A. We collaborate inside and outside our institutions.**

Embedded in major research institutions, law school veterans clinics collaborate inside and outside their institutions, providing excellent representation of low-income veterans. For example, the William and Mary Veterans Clinic created an email listserv in which law school veterans clinic faculty, students, and staff, legal aid attorneys, and attorneys who do a large volume of pro bono work, share ideas and disseminate information. Informally called the "brain trust," this email listserv is a vital tool allowing practitioners across the nation to share lessons learned, legal and scientific research, case strategy, and innovative ideas. Practitioners also use the listserv as a referring tool to try to place veterans with a legal representative when they cannot represent the veteran.

Plus, law school veterans clinics collaborate with local and national organizations that provide pro bono legal services to veterans. For example, The Veterans Consortium Pro Bono Program (TVC) enables law school clinics to accept pro bono representation of low income veterans in need of legal assistance for discharge upgrades, appeals to the U.S. Court of Appeals for Veterans Claims, and matters before the Board of Veterans' Appeals. Not only can a law school clinic choose clients to represent from sanitized case summaries, the clinic receives reminders when pleadings are due, an assigned mentor, and live and recorded training. TVC also provides case support by, for example, gathering all service records for discharge upgrade cases. Plus,

TVC provides a library of resources on a variety of veterans law issues and grants for client expenses.

Moreover, law school clinics collaborate with other departments within their institutions. For example, at the University of North Carolina, law students work with communications staff members to produce films for discharge upgrades. At Delaware Law School's Veterans Law Clinic, clients who need social worker support can be connected with Widener's graduate social work department, which is able to provide counseling and guide clients to other community resources they need. Plus, Detroit Mercy's clinic is establishing a joint program with the Detroit Mercy graduate school in psychology. The program will allow graduate students, under supervision, to provide assessments and counseling services for select veteran clients of the Detroit Mercy law school clinic. The planned program will also provide cross training for clinical law students and graduate psychology students and provide educational seminars focused on mental health, wellness, and related issues for veteran clients of the Detroit Mercy law school clinic. Moreover, the UF Law clinic provides know your rights presentations to ROTC cadets. Plus, the University of Arizona has a large intake and referral program in which it refers veterans to pro bono organizations and veteran friendly attorneys on issues such as family law, landlord-tenant, bankruptcy, tax, and consumer protection.

Finally, law school clinics are often contacted by clients they cannot serve. In those instances, law school clinical representatives refer the client to someone who can help.

#### **B. We train future generations to serve to veterans.**

The nation's law school veterans clinics instill in future lawyers a commitment to serve veterans and military personnel. When a law student prepares an amicus brief before the U.S. Supreme Court, obtains disability compensation for a widow who lost her husband to glioblastoma from Agent Orange exposure, or informs a client who was discharged other than honorably because of her sexual orientation that her discharge is upgraded to honorable, the student is inspired. Once she becomes a lawyer, such a student will maintain a commitment to serving veterans throughout her career. Students from our clinics become legal aid attorneys, judge advocates, governmental attorneys, and clinical fellows serving military personnel and veterans across the nation. For example, after having worked in the Stetson University Veterans Advocacy Clinic, nine graduates became judge advocates, and 23 entered veterans law practice or do pro bono work for veterans. Even if our students do not choose to serve veterans as their full-time legal career, they often continue to do pro bono work for veterans after they graduate. Only 7% of the U.S. population serves in the military. Our unique clinics expose younger generations to the sacrifices and service of military veterans. Students develop competency about military culture and military service.

#### **C. Our services are pro bono.**

Our services are entirely pro bono, and many clinics fund client expenses. For example, some clinics use money collected under the Equal Access to Justice Act (EAJA) to pay for client expenses. To illustrate, a law school veterans clinic accepts representation of a veteran appealing an adverse decision from the Board of Veterans' Appeals to the U.S. Court of Appeals for



Veterans Claims. Supervised law students review the record before the agency and submit to VA OGC a summary of issues that they will raise in their opening brief. This memo convinces VA OGC that the Board erred, so VA OGC agrees to a remand. Because the veteran has prevailed in an action against the federal government, he is entitled to reimbursement of attorneys' fees and expenses under the Equal Access to Justice Act. The law school clinic then uses those collected funds to pay a medical expert to review the claims file and draft an objective letter opining as to service connection. This practice gives low-income veterans access, that they would not otherwise have had, to qualified medical experts to prepare expert evidence in support of their claims.<sup>10</sup>

#### **D. Law students innovate**

Lead by seasoned practitioners and staffed by creative students, law school veterans clinics innovate. For example, at the University of North Carolina, the faculty and students are bringing discharge upgrade practice into the 21<sup>st</sup> century. When representing a discharge upgrade client, traditionally, the advocate prepares a brief, collects affidavits from the veteran, buddies, family members, and other character references, obtains an expert opinion from a physician, and gathers other evidence such as credit reports and diplomas. UNC law students do all that and more. Recognizing that younger generations are accustomed to learning through technology, students partner with the veteran to prepare a YouTube video to advocate before the military review board. Students have also prepared engaging PowerPoint presentations in discharge upgrade matters, recognizing that military personnel reviewing discharge upgrade petitions are accustomed to processing information through video and PowerPoint.

#### **E. Embedded in world-class research institutions, law school clinics help veterans systemically.**

Law school veterans clinics are well-positioned to help veterans systemically. For example, the Legislative Advocacy Committee of the Consortium has commented on proposed VA rules for:

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<sup>10</sup> For example, the UF Law clinic used EAJA fees to pay for a medical expert's nexus letter concerning health conditions that lead to heart failure, blindness, and amputations. VA's ultimate decision granting service connection cited that nexus opinion. Ultimately, VA determined that the conditions that lead to blindness, heart failure, and multiple amputations were connected to service, resulting in the veteran's recovery of hundreds of thousands of dollars of retroactive benefits, 100% disability rating, and special monthly compensation. Similarly, at Detroit Mercy, EAJA fees paid for an independent psychiatric evaluation for a homeless veteran living with schizophrenia and substance abuse issues. The veteran had applied for VA benefits within one year of service and was erroneously denied. The veteran pursued the claims numerous times over 45 years until he came to the Detroit Mercy clinic. VA previously refused to even give him a compensation and pension exam. The clinic finally obtained VA's decision of 100% service connection for the conditions for which he had applied for compensation so many years before. The psychiatric evaluation was stated in the decision as the basis for finding nexus and the rating at the 100 % level. Without the EAJA fees to pay for independent evaluations providing the nexus opinions, in both cases, it is likely that the clients would not have been able to obtain earned benefits.

the definition of aggravation, presumptive service connection for pulmonary conditions for Gulf War veterans, character of discharge, mental disorders, ear, nose, throat, and audiology disabilities, and the digestive system. Drafting these comments is a labor-intensive collaborative effort. Multiple professors and students participate, coordinating research and sharing stories about their relevant cases. This combined theoretical and practical experience, gathered from students and professors across the nation provides valuable input to VA in improving the regulatory framework for VA benefits.

Plus, the Consortium's Advocacy Committee has drafted four amicus briefs in important cases affecting veterans before the U.S. Court of Appeals for the Federal Circuit and one amicus brief before the U.S. Supreme Court; representatives of the Advocacy Committee are in the process of drafting two more amicus briefs before the U.S. Supreme Court. These Consortium committees have systemic impact, and individual law school clinics improve systems as well. For example, a class action brought by Yale University's veterans clinic resulted in the Department of the Navy agreeing to review the discharges of thousands of veterans affected by PTSD, TBI, MST, and other behavioral or mental health conditions.

#### **F. Some law school clinics specialize, securing positive outcomes for veterans when others cannot.**

Some veterans clinics specialize, allowing faculty, staff, and students to develop expertise and help veterans when other representatives who have not been able to develop such expertise may not be able. For example, the Veterans Legal Clinic at the University of San Diego specializes in advising and representing veterans who have experienced military sexual trauma (MST). These veterans may qualify for VA disability benefits for symptoms and conditions related to their MST. Some veterans may have been separated from the military because of their MST related symptoms or conditions and may be eligible for a change of discharge characterization.

Moreover, the University of Baltimore specializes in assisting veterans with mental health issues, securing expert medical opinions at no cost to veterans to support their VA benefits and discharge petitions.

### **III. Reform ideas to explore**

We developed the following ideas for reform based our collective experience representing veterans. However, we created this list in a relatively short timeframe, and we have not had sufficient time to fully evaluate these proposals and identify potential downsides or obstacles to implementation. The following are merely ideas that seem to make sense in addressing upstream risks of veteran suicide. We are happy to more fully explore these ideas for reform.

#### **A. Fund entrepreneurial business law clinics**

Congress should consider authorizing grants to fund small business clinics to serve veterans. For the most part, the current infrastructure of law school veterans clinics developed without federal funding. But if Congress wants to jumpstart additional vital legal services for veterans to address upstream risks of suicide, Congress should consider funding business law clinics for veterans in law schools. In these clinics, law students could handle transactional legal matters for veterans.

Veterans are entrepreneurial. According to the U.S. Small Business Administration, veterans are 45% more likely to start their own business. One out of every 10 small businesses in the U.S. is veteran owned. Students could help veteran owned businesses in a variety of issues from handling transactional legal matters to implementing legal protections and providing guidance on regulatory compliance. Students could help veterans form business entities, draft governing documents, draft policies, and obtain intellectual property protections. Law school students could partner with business school students to provide integrated services. Business school students could help veteran clients create marketing materials and business plans. These clinics could help veterans obtain financial security and transition to financial independence and private sector employment. Plus, veteran owned businesses will be more likely to hire veterans.

### **B. Allow servicemembers with general discharges access to the G.I. Bill**

The G.I. Bill has special eligibility requirements. Veterans must be honorably discharged. A general discharge is not sufficient. Even if the VA determines the veteran is honorable for VA purposes, the veteran's DD 214 will not read honorable unless DoD determines the veteran is honorable and changes the DD 214. Veterans who suffer trauma in military service and use alcohol or drugs to self-medicate mental health symptoms are often discharged other than honorably.<sup>11</sup> Even when a veteran receives legal representation to petition for a discharge upgrade, the military often declines to upgrade the discharge or upgrades the discharge only to general, depriving the veteran access to the G.I. Bill, even though the veteran may have contributed to the G.I. Bill from his own pay.

For example, a client from one law school clinic received an other than honorable discharge because he tested positive for using drugs on one location. This veteran was a medic in the Iraq War and had several back-to-back deployments. As a medic, he was exposed to enormous trauma, and he therefore suffered from diagnosed service-connected PTSD. Even though he used drugs on only one instance, he was discharged other than honorably. He petitioned to upgrade his discharge and was represented by counsel, but the Naval Discharge Review Board upgraded his discharge only to general. He has had to take out loans to pay for his own education. The military should not strip G.I. Bill benefits from veterans whose only offense was self-medication of service-connected PTSD. Doing so jeopardizes the financial security of these veterans not only because they lose access to the G.I. Bill but because a general discharge limits their employment prospects.

### **C. When the only misconduct that led to discharge was marijuana use, and the servicemember has a diagnosed mental health condition, the discharge level should be no lower than general**

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<sup>11</sup> October 2017 psychiatry research article available in the National Library of Medicine National Center for Biotechnology Information, *The association between discharge status, mental health, and substance misuse among young adult veterans* by Stephanie Brooks Holiday et. al (exploring study of Marines serving from 2001 to 2006 finding that service members with PTSD or other mental health condition were more likely to have a drug related discharge or non-drug-related punitive discharge than their peers without a psychiatric diagnosis) available at [pubmed.ncbi.nlm.nih.gov](https://pubmed.ncbi.nlm.nih.gov).

Trauma suffered in service and resulting mental health symptoms can cause servicemembers to deviate from their normal standards of conduct and self-medicate mental health symptoms with marijuana.<sup>12</sup> If these servicemembers test positive for marijuana use, they may receive other than honorable discharges. Such a stigmatizing discharge deprives them of VA benefits and imposes “an unfair and unjust life sentence of decreased earning capacity.”<sup>13</sup> In many states, marijuana use is legal for medicinal and recreational purposes.<sup>14</sup> Specifically, marijuana use is approved in several states to treat PTSD.<sup>15</sup> A federal study found that cannabis was beneficial for PTSD treatment.<sup>16</sup> Therefore, when servicemembers with mental health conditions receive an other than honorable discharge and are deprived of VA benefits and stigmatized for life, they are unduly punished for self-medicating mental health conditions that are often caused by service with a substance that is legal in many states. Our proposal does not force the military to retain servicemembers who test positive for marijuana use. Nor does it require the military to grant an honorable discharge when the misconduct was marijuana use. Rather, our proposal strikes the right balance by empowering the military to protect military readiness while also requiring the military to refrain from imposing “an unjust life sentence of decreased earning capacity” on people who volunteered to serve their country who have done nothing more than self-medicate mental health symptoms with marijuana.<sup>17</sup>

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<sup>12</sup> For example, one Detroit Mercy clinic client was a Vietnam combat veteran who returned home with undiagnosed PTSD and self-medicated with marijuana. He tested positive for marijuana use on one instance and received an other than honorable discharge for the misconduct of drug use. He applied for a VA character of discharge recharacterization but was denied outright for “willful and persistent misconduct,” even though the case law supported a favorable VA character of discharge determination. He is homeless, and he has no VA benefits for his multiple somatic and mental health conditions with which he has struggled for decades. He did not even know about the discharge upgrade process until he sought help from the Detroit Mercy clinic in 2019. As another example, one UF Law client had multiple traumas in military service including the death of her spouse and other family members, witnessing a traumatic accident to a fellow servicemember, and combat related trauma. She self-medicated undiagnosed PTSD and anxiety disorder with marijuana and tested positive for marijuana use on two instances. VA denied her character of discharge petition, and DOD denied her discharge upgrade petition of the other than honorable discharge she received for the second occasion of testing positive for marijuana use. VA denied her petition to upgrade her character of discharge without providing any rationale.

<sup>13</sup> University of Pennsylvania journal article at footnote 18.

<sup>14</sup> “Where Is Marijuana Legal? A Guide to Marijuana Legalization” by Claire Hansen U.S. News & World Report, April 20, 2022 (stating recreational marijuana is legal in 18 states, Washington DC, and Guam) at <https://www.usnews.com>.

<sup>15</sup> *Review of Medical Marijuana for the Treatment of Posttraumatic Stress Disorder: Real Symptom Relief or Just High Hopes?* Ilona Shishko, PharmD, Rosana Oliveira, PharmD, BCPP, and Kenneth Almeida, PharmD. <https://pubmed.ncbi.nlm.nih.gov>.

<sup>16</sup> Federal Study Finds Cannabis Beneficial for PTSD Treatment, September 21, 2021, Ismael Rodriguez, Veterans of Foreign Wars (stating for veterans diagnosed with PTSD and looking for alternative ways to treat it, the first FDA regulated study of the benefits of smoked cannabis brought about favorable results). H.

<sup>17</sup> Pennsylvania Journal of Law and Public affairs article fn. 18.

#### **D. Allow other than honorably discharged servicemembers to retain eligibility for VA disability compensation**

Disparity in assignment of other than honorable discharges results in servicemembers engaging in similar misconduct receiving different discharge characterizations based upon varying philosophies of the military services or of commanders.<sup>18</sup> “[S]uch disparities lead to some [servicemembers] receiving a life sentence of decreased earning capacity through the assignment of an [other than honorable] discharge while similarly situated [servicemembers] retain eligibility for disability compensation through the assignment of a general discharge.”<sup>19</sup> “A study of Marines serving from 2001 to 2006 found that those ... who had a diagnosis of PTSD or some other psychiatric diagnoses were more likely to have a drug-related discharge or non-drug-related punitive discharge than their peers without a psychiatric condition. This suggests that [some] servicemembers with psychiatric diagnoses are engaging in patterns of behavior that put them at risk of punitive discharge (e.g. self-medication with drugs and alcohol). Veterans who received ... other than honorable discharges were significantly more likely to screen positive for generalized anxiety disorder, depression, PTSD, and hazardous alcohol use than those who received an honorable discharge.”<sup>20</sup> Other than honorably discharged servicemembers should retain eligibility for VA disability compensation. This ensures that servicemembers who have PTSD and other service-connected health conditions limiting their ability to work receive the VA benefits that they deserve.<sup>21</sup>

#### **E. Enhance VASH services¶**

VASH programs should be enhanced to establish a new role for workers who are specifically trained in navigating the complexities of the relationship between veterans with PTSD or traumatic brain injuries, who are utilizing VASH vouchers, and their landlords. Specialized VASH workers, who are well versed in the specific behavioral needs of veterans affected by PTSD and TBI, should act as intermediaries with the landlord with the goal of maintaining the veteran’s housing. Such workers should be trained in disability rights and fair housing law as well as alternative dispute resolution to maximize the likelihood of their successful advocacy.<sup>22</sup>

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<sup>18</sup> 2021 University of Pennsylvania Journal of Law and Public Affairs, *Other Than Honorable Discharges: Unfair and Unjust Life Sentences of Decreased Earning Capacity* by Major Jeremy R. Bedford at <https://scholarship.law.upenn.edu>.

<sup>19</sup> *Id.*

<sup>20</sup> 2017 psychiatry research article, *The Association between Discharge Status, Mental Health, and Substance Misuse among Young Adult Veterans* by Stephanie Brooks Holiday and Eric R. Pedersen.

<sup>21</sup> *Id.* (citing 1980 GAO report *Military Discharge Policies and Practices Result in Wide Disparities: Congressional Review Is Needed*).

<sup>22</sup> This reform follows the White House’s Statement outlining five priorities for reducing military and veterans’ suicide, which advocates for addressing upstream risk factors, such as lack of housing. Statements and Releases, White House, Fact Sheet: New Strategy Outlines Five Priorities for Reducing Military and Veteran Suicide (Nov. 2, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/11/02/fact-sheet-new-strategy-outlines-five-priorities-for-reducing-military-and-veteran-suicide/>.

## **F. Enhance VA disability pension benefits¶**

The VA Pension benefit should be reformed to ensure no disabled veteran is living in extreme poverty. Currently, VA Pension benefits are only available for extremely low-income veterans whose annual countable income is less than \$14,753, approximately \$1230.00 per month, with adjustments made for veterans with dependents or those who qualify for special monthly pension. This extremely low benefit means that the aged and disabled veterans who receive VA Pension benefits live at close to the Federal Poverty Level. *See* 87 FR 3315 (listing the federal poverty level for a single adult as \$13,590 per year). To receive VA Pension benefits, a veteran must 1) have served in active duty during wartime, 2) not received a dishonorable discharge, and 3) be aged or permanently and totally disabled. These wartime veterans should be given benefits at a rate that will allow them to live comfortably in their communities, such as a percentage of Area Median Income.<sup>23</sup>

## **G. Bring together providers, advocates, veterans, and other stakeholders to identify the needs of veterans at risk of mental health crisis and work to meet those needs through planning and cooperative action**

Community Homelessness Assessment, Local Education and Networking Groups for Veterans referred to as Project CHALENG began in 1994. The goal of Project CHALENG is to bring together providers, advocates, veterans, and other stakeholders to help identify the needs of homeless veterans and address those needs. One component of CHALENG is a survey. Participants rate the needs of homeless veterans in their local communities. Regular CHALENG meetings make up the second component of the Project. These meetings encourage collaboration between VA and community service providers. CHALENG survey results are used to identify and prioritize unmet needs of homeless veterans and encourage collaboration amongst community partners to meet those needs. In 2020, one of the top unmet needs for veterans was legal assistance in six areas: family law, court fees/court fines, credit issues/debt collection, criminal record expungement, child support issues, and tax issues.

Congress should authorize creation of a CHALENG Project for veterans at risk of mental health crisis. Although many veterans at risk of mental health crisis may be homeless, homelessness does not capture all veterans at risk of crisis. For example, veterans diagnosed with mental health conditions, discharged other than honorably, or who have recently returned from deployment in a war zone may also be at risk. First, VA should use available data to identify veterans at risk of mental health crisis. Then, as with the existing CHALENG Project, identified individuals should be asked to complete a survey to identify the needs of this population. The survey should be

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<sup>23</sup> This reform follows the White House's Statement outlining five priorities for reducing military and veterans' suicide, which advocates for addressing upstream risk factors, such as lack of housing. Statements and Releases, White House, Fact Sheet: New Strategy Outlines Five Priorities for Reducing Military and Veteran Suicide (Nov. 2, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/11/02/fact-sheet-new-strategy-outlines-five-priorities-for-reducing-military-and-veteran-suicide/>.

administered to veterans at risk, providers of various services to veterans, including legal and medical, and other stakeholders such as VA staff, community leaders, and volunteers. Then, law school clinics and other organizations that serve veterans can use the results of the survey to ensure provision of services to most unmet needs in their local communities.

**I. Authorize expedited decisional process for veterans who received other than honorable discharges because of their sexual orientation under Don't Ask Don't Tell and predecessor policies**

Many of our clinics work with veterans discharged other than honorably under Don't Ask Don't Tell and predecessor discriminatory policies. As their legal representatives, we collect evidence and prepare briefs to support their petitions for upgrades. Then, we often wait over a year for the military review board to decide on the petition, even though, in most instances, the veteran had no misconduct in service. These veterans must continue to wait for justice while their DD 214s continue to limit their employment prospects. Congress should authorize a streamlined DoD decisional process through which these veterans, who did nothing wrong in service, receive prompt upgrades to their discharges and corrected DD 214s indicated that their service was honorable. For example, there could be a system where veteran applicants for upgrades certify that there was no misconduct connected with their discharge. Alternatively, Congress could explore creating a system through which the DD 214s of this group of veterans, who were discharged because of discriminatory policies and had no misconduct, are automatically upgraded to honorable. Other than honorable discharges limit economic opportunities for veterans.

**J. Special measures to address homelessness**

Homelessness, to include lack of stable housing, is a significant cause of stress that may lead to a suicidal crisis. Moreover, homelessness, and housing issues generally, are related to challenges associated with finding and maintaining employment, as well as addressing mental and physical health issues. While these issues are not limited to veterans, they can have a particularly acute effect on veterans in part because these issues strongly conflict with the values and sense of purpose fostered by military service. Addressing veterans' homelessness will have an exponentially positive impact on reducing veterans' stress and potentially mitigate other upstream risks contributing to development of suicidal crisis. There are many challenges in preventing veterans' homelessness. First, there has been an increase in rents resulting in a lack of affordable housing. Second, a growing portion of the homeless veteran population is aging, and, therefore, systems supporting homelessness must be suitable to address the issues of an aging population. For example, there seems to be a lack of sufficient nursing care facilities for low-income individuals, exacerbating challenges in supporting an aging population facing homelessness. Moreover, with the end of pandemic inspired rent relief programs, there may be a lack of sufficient upstream resources to prevent evictions.

Law school veterans clinics could potentially help address these issues associated with eviction and homelessness by increasing access to legal services. In eviction lawsuits nationwide, an estimated 90% of landlords have representation. But only 10% of tenants have representation.

Potentially, veterans legal clinics could help address these access to justice issues. Plus, developing court navigation services to assist tenants facing eviction by providing educational services could help. It is common for many tenants to self-evict, and they do not understand their protections. Again, veterans legal clinics could assist in helping veterans navigate the challenging and incredibly stressful eviction process.

#### **K. Provide VA healthcare to all veterans regardless of discharge status**

Veterans with other than honorable discharges face huge obstacles when transitioning to civilian life. Veterans who are most in need of healthcare, including those with other than honorable discharges who are suffering from mental health issues, many of which were caused by military service, are not getting the treatment they need. Congress has met these veterans halfway by offering limited healthcare to some veterans but should close the gap and offer healthcare to any veteran who has served.<sup>24</sup>

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<sup>24</sup> <https://colombialaw.review.org/content/discharged-and-discarded-the-collateral-consequences-of-a-less-than-honorable-military-discharge/>. We recognize that there are different levels of discharge and that arguments for expanding access to veterans with OTH discharges may be more convincing than arguments supporting expanding healthcare access to dishonorably discharged individuals. But we believe this issue must be explored.